

In re Interest of Shayla H. et. al

Caselaw No.

22 Neb. App. 1

Filed on

Tuesday, May 20, 2014

SUMMARY: The active efforts requirement of ICWA applies even after the children are returned home to the parent. Rehabilitation plan requirements on medical care were not relevant to the adjudication of inappropriate discipline.

Shayla H., DOB 8/01, Shania H., DOB 8/03, and Tanya H., DOB 9/04, were removed from the home of their father, David, and his girlfriend, Danielle, on January 17, 2013, after Shayla was found with a dark purple handprint bruise on her cheek. On January 22nd, a 3a petition was filed. By January 29th, Shania and Tanya had returned home, and Shayla returned home on March 9th. Shania and Tanya are members of the Rosebud Sioux Tribe and Shayla is eligible for enrollment. After an adjudication hearing, the court found the children within the meaning of N.R.S. 43-247(3)(a) due to inappropriate physical discipline by Danielle on Shayla. David and Danielle participated in a variety of services. A disposition hearing was held on July 11, 2013, where a request was made by DHHS to change family therapists. The DHHS caseworker also opposed closing the case because the children continued to have behavioral issues. After the hearing, the judge ordered multiple provisions, including that David cooperate with DHHS, that he arrange medical care and that he ensure appropriate supervision. The court also found that reasonable efforts had been made. David appealed, primarily arguing that active efforts should have been provided even when the children were back in his home. Amici curiae were filed by several entities, including multiple tribes.

The Court of Appeals affirmed in part and reversed and remanded in part. As to the issue of active efforts, the Court of Appeals reviewed the language of ICWA and caselaw from other states, including an Iowa Supreme Court decision that held that ICWA applied to all abuse/neglect court cases with Indian children because they could result in potential foster care placements. *In re Interest of J.R.H.*, 358 N.W.2d 311 (Iowa 1984). It rejected application of the recent U.S. Supreme Court decision in *Adoptive Couple v. Baby Girl*, ____ U.S. ____, 133 S. Ct. 2552, 186 L. Ed. 2d 729 (2013), because it was limited to a case where the father had never had custody of the child and the Supreme Court determined therefore that there was no "breakup" of the family. The amici parties in the case noted that Nebraska ICWA statute specifically stated active efforts were to prevent breakup of the family, that foster care could occur any time during a court case and that because removals can happen multiple times during a case it would produce the odd result of use of ICWA being like "a light switch that can be turned on and off." The Court of Appeals concluded that the active efforts provision of ICWA should have applied at disposition in this case because the children had been removed earlier and there was the possibility they could be removed again, and DHHS remained the legal custodian. It also noted that if such a case proceeded to TPR, the failure to show active efforts throughout the life of the case would be problematic. It also referenced its holding in *In re Interest of Louis S., et al.*, 17 Neb. App. 867, 744 N.W.2d 416 (2009), that relied on active efforts made throughout the case, even when the children were in the parent's home as tacit recognition that active efforts are required when the children are in the

home. However, the Court of Appeals noted that the type of active efforts offered during removal may differ from those offered when the children are in the parent's home.

To the father's claim that certain parts of the rehabilitation plan were not related to the adjudication, the Court of Appeals noted that while the juvenile court has broad discretion, the plan must be reasonably related to the objective of reunification, that is, that it tends to correct or ameliorate a condition on which the adjudication was based. It approved the plan elements requiring the father to cooperate with DHHS for drop-in services and therapy, the requirements prohibiting unapproved physical discipline, and the requirement of ensuring appropriate adult supervision. However, the Court of Appeals found that the provisions relating to medical care were not related to the adjudication of inappropriate discipline. It also approved the court's order for a change in the family therapist.

Tags

active,
ameliorate,
amici,
amicus,
apply,
behavior,
care,
children,
condition,
correct,
custody,
Danielle,
David,
DHHS,
discipline,
efforts,
family,
home,
ICWA,
inappropriate,
indian,
medical,
plan,
reasonably,
rehabilitation,
Related,
return,
reunification,
reunify,
Shania,
Shayla,
Tanya,
therapist,
tribal,

